

REMARKS

Applicants previously presented claims 1-32 and 34-36 for examination. In the above-identified Office Action, claim 36 was withdrawn from consideration and all of the other claims were rejected. These rejections are fully traversed below.

Applicants appreciate the well thought out suggestions given by the Examiner in the telephone interview on November 30, 2004, with Applicants' representative and have incorporated the comments in this amendment. Also, during the interview, Applicants' representative discussed with the Examiner claim 1 amendments, and the Examiner expressed the need for a new search.

By this Amendment, Applicants have (a) asked for initialing of a previous-submitted Information Disclosure Statement; (b) traversed the election decision regarding claim 36; and (c) amended claims 1, 2, 3, 4-13, 15-17, 19-25, 27-32 and 34.

Accordingly, claims 1-32, 34 and 35 are pending. Reconsideration is respectfully requested based on the following remarks.

Information Disclosure Statement

On February 2, 2004, Applicants filed (mailed January 27, 2004) an Information Disclosure Statement with the U.S. Patent and Trademark Office (USPTO) for the above-identified application. It is respectfully requested that the Examiner return to Applicants an initialed version of the Form PTO-1449 that accompanied the Information Disclosure Statement so as to indicate consideration of same.

Election of Claim 36

The Office Action has withdrawn claim 36 for consideration. The restriction requirement is respectfully traversed on the basis that all claims have already received an action on the merits. As such, since a search and examination of the entire application has already been made, restriction should not be required even if the application includes claims on two distinct or independent inventions. See M.P.E.P. §803 which states: "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or

independent inventions.” Having said that, Applicants agree to elect the inventions covered under claims 1-32 and 34-35 for examination.

Nonfunctional Descriptive Material

The Office Action on page 8 stated that, “However, Walker does not expressly disclose wherein the at least one customer order includes more than one ordered item, and wherein each ordered item in the at least one customer order can have a quantity larger than one and wherein at least one item each of the received customer orders has not been delivered to the corresponding customer. These differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The wherein the at least one customer order includes more than one ordered item, and wherein each ordered item in the at least one customer order can have a quantity larger than one and wherein at least one item each of the received customer orders has not been delivered to the corresponding customer would be performed regardless of the data. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.”

To prevent any ambiguity, Applicants have amended the claims and reformatted the claim languages. For example, claim 1 includes the limitations of receiving a customer order with more than one ordered item, and with an ordered item relating to an ordered quantity larger than one; and analyzing a selected portion of the received customer order with at least another customer order, with said analyzing being performed prior to the delivery of at least one item in each of the customer orders. Applicants submit that the claims can no longer be construed to be reciting descriptive material that is not functionally involved in the claimed process.

103 Rejection

Claims 1-13, 15-20, and 23-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,520 to Walker et al. (hereinafter referred to as “Walker”). Claims 14, 21, 22, 31, 32 and 34 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of U.S. Patent No. 5,963,929 to Brinkley et al.

(hereinafter referred to as “Brinkley”). Applicants respectfully disagree with these rejections.

Before summarizing the reasons for disagreeing with the rejections, Applicants would like to incorporate by reference the general arguments against Walker and Brinkley in the Remarks of Applicants’ Response filed on June 22, 2004 with the USPTO to respond to the USPTO’s office action dated February 23, 2004 for the above-identified application.

In general, Walker pertains to a vending machine that receives money and outputs products. The machine can offer a substitute product when a selected product is out of stock. While Walker does make brief mention that its vending machine may be networked to store data at another location, Walker is far different from Applicants’ claimed invention of a networked solution that can analyze at least two customer orders that have yet to be totally delivered, and determine a substitute for an oversold item. Walker’s vending machine cannot do that. Actually, Walker does not even contemplate such possibilities.

Brinkley pertains to an inventory management strategy that combines multiple management strategies. Based on the invented strategy, just enough inventory is maintained to satisfactorily fulfill customer orders without over-stocking. Brinkley does not teach or suggest substituting one product with another. Instead, Brinkley assumes products in an order to be fixed, and devises appropriately inventory management techniques based on the order. In other words, Brinkley teaches away from Applicants’ claimed invention.

In any event, Brinkley cannot overcome the deficiencies of Walker noted above. Thus, it is submitted that neither Walker nor Brinkley, individually or in any combination, teaches or suggests the claimed invention.

Accordingly, claims 1, 15, 23, 29 and 34 are patentably distinct from Walker and/or Brinkley. Similarly, dependent claims 2-14, 16-22, 24-28, 30-32, and 35 which respectively depend from claims 1, 15, 23, 29 and 34, are therefore also not taught or suggested by Walker and/or Brinkley for at least the reasons noted above.

Additional limitations recited in the independent claims or the dependent claims are not further discussed as the above-discussed limitations are clearly sufficient to

distinguish the claimed invention from Walker and Brinkley. Thus, it is respectfully requested that the Examiner withdraw the rejections of claims 1-32, 34 and 35 under 35 U.S.C. 103(a).

In the event that the Examiner, upon reconsideration, determines that an action other than an allowance is appropriate, the Examiner is requested and authorized to contact the undersigned prior to taking such action, if the Examiner feels that such a telephone call will advance the prosecution of the present application.

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